

AMENDED IN SENATE MARCH 25, 2011

**SENATE BILL**

**No. 426**

---

**Introduced by Senator Calderon**

February 16, 2011

---

~~An act to amend Section 1161.5 of the Code of Civil Procedure, relating to tenancy. An act to add Section 3482.8 to the Civil Code, and to amend Section 1161 of the Code of Civil Procedure, relating to nuisance.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 426, as amended, Calderon. Tenancy: eviction: notices.

Existing law *defines public and private nuisance. Existing law provides that a public nuisance may be remedied by an indictment or information, a civil action, or abatement and that a private nuisance may be remedied by a civil action or abatement. Existing law regulates evictions and provides that a tenant who remains in possession of a property after the term of his or her lease expires, or who fails to pay rent, is guilty of unlawful detainer. Existing law requires specified notices to be provided to tenants, as prescribed, and permits a landlord to include in the notice a provision stating that the landlord may elect to declare the lease forfeit, and this declaration may be nullified if the tenant performs within 3 days after service of the notice who commits, or permits the maintenance of, a nuisance upon the premises thereby terminates his or her lease and is subject to eviction.*

~~This bill would make a technical nonsubstantive, change to these provisions provide that a building or property used to conduct dogfighting or cockfighting in violation of specified criminal provisions is a nuisance and would specify that a tenant who commits or maintains this nuisance may be evicted.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 3482.8 is added to the Civil Code, to read:*

2     3482.8. Any building or property used for the purpose of  
3     willfully conducting dogfighting in violation of Section 597.5 of  
4     the Penal Code or cockfighting in violation of subdivision (b) of  
5     Section 597b of the Penal Code is a nuisance.

6     *SEC. 2. Section 1161 of the Code of Civil Procedure, as*  
7     *amended by Section 5 of Chapter 244 of the Statutes of 2009, is*  
8     *amended to read:*

9     1161. A tenant of real property, for a term less than life, or the  
10    executor or administrator of his or her estate heretofore qualified  
11    and now acting or hereafter to be qualified and act, is guilty of  
12    unlawful detainer:

13    1. When he or she continues in possession, in person or by  
14    subtenant, of the property, or any part thereof, after the expiration  
15    of the term for which it is let to him or her; provided the expiration  
16    is of a nondefault nature however brought about without the  
17    permission of his or her landlord, or the successor in estate of his  
18    or her landlord, if applicable; including the case where the person  
19    to be removed became the occupant of the premises as a servant,  
20    employee, agent, or licensee and the relation of master and servant,  
21    or employer and employee, or principal and agent, or licensor and  
22    licensee, has been lawfully terminated or the time fixed for  
23    occupancy by the agreement between the parties has expired; but  
24    nothing in this subdivision shall be construed as preventing the  
25    removal of the occupant in any other lawful manner; but in case  
26    of a tenancy at will, it must first be terminated by notice, as  
27    prescribed in the Civil Code.

28    2. When he or she continues in possession, in person or by  
29    subtenant, without the permission of his or her landlord, or the  
30    successor in estate of his or her landlord, if applicable, after default  
31    in the payment of rent, pursuant to the lease or agreement under  
32    which the property is held, and three days' notice, in writing,  
33    requiring its payment, stating the amount which is due, the name,  
34    telephone number, and address of the person to whom the rent  
35    payment shall be made, and, if payment may be made personally,

the usual days and hours that person will be available to receive the payment (provided that, if the address does not allow for personal delivery, then it shall be conclusively presumed that upon the mailing of any rent or notice to the owner by the tenant to the name and address provided, the notice or rent is deemed received by the owner on the date posted, if the tenant can show proof of mailing to the name and address provided by the owner), or the number of an account in a financial institution into which the rental payment may be made, and the name and street address of the institution (provided that the institution is located within five miles of the rental property), or if an electronic funds transfer procedure has been previously established, that payment may be made pursuant to that procedure, or possession of the property, shall have been served upon him or her and if there is a subtenant in actual occupation of the premises, also upon the subtenant.

The notice may be served at any time within one year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than 60 days after the expiration of the term without any demand of possession or notice to quit by the landlord or the successor in estate of his or her landlord, if applicable, he or she shall be deemed to be holding by permission of the landlord or successor in estate of his or her landlord, if applicable, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during that year, and the holding over for that period shall be taken and construed as a consent on the part of a tenant to hold for another year.

3. When he or she continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and three days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him or her, and if there is a subtenant in actual occupation of the premises, also, upon the subtenant. Within three days after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the

1 lease from forfeiture; provided, if the conditions and covenants of  
2 the lease, violated by the lessee, cannot afterward be performed,  
3 then no notice, as last prescribed herein, need be given to the lessee  
4 or his or her subtenant, demanding the performance of the violated  
5 conditions or covenants of the lease.

6 A tenant may take proceedings, similar to those prescribed in  
7 this chapter, to obtain possession of the premises let to a subtenant  
8 or held by a servant, employee, agent, or licensee, in case of his  
9 or her unlawful detention of the premises underlet to him or her  
10 or held by him or her.

11 4. Any tenant, subtenant, or executor or administrator of his or  
12 her estate heretofore qualified and now acting, or hereafter to be  
13 qualified and act, assigning or subletting or committing waste upon  
14 the demised premises, contrary to the conditions or covenants of  
15 his or her lease, or maintaining, committing, or permitting the  
16 maintenance or commission of a nuisance upon the demised  
17 premises or using the premises for an unlawful purpose, thereby  
18 terminates the lease, and the landlord, or his or her successor in  
19 estate, shall upon service of three days' notice to quit upon the  
20 person or persons in possession, be entitled to restitution of  
21 possession of the demised premises under this chapter. For  
22 purposes of this subdivision, a person *who commits or maintains*  
23 *a nuisance as described in Section 3482.8 of the Civil Code, or*  
24 *who commits an offense described in subdivision (c) of Section*  
25 *3485 of the Civil Code, or subdivision (c) of Section 3486 of the*  
26 *Civil Code, or uses the premises to further the purpose of that*  
27 *offense shall be deemed to have committed a nuisance upon the*  
28 *premises.*

29 5. When he or she gives written notice as provided in Section  
30 1946 of the Civil Code of his or her intention to terminate the  
31 hiring of the real property, or makes a written offer to surrender  
32 which is accepted in writing by the landlord, but fails to deliver  
33 possession at the time specified in that written notice, without the  
34 permission of his or her landlord, or the successor in estate of the  
35 landlord, if applicable.

36 As used in this section, tenant includes any person who hires  
37 real property except those persons whose occupancy is described  
38 in subdivision (b) of Section 1940 of the Civil Code.

39 This section shall become operative on January 1, 2012.

1     ~~SECTION 1. Section 1161.5 of the Code of Civil Procedure~~  
2     ~~is amended to read:~~  
3     ~~1161.5. If the notice required by Section 1161 states that the~~  
4     ~~lessor or the landlord may elect to declare the forfeiture of the~~  
5     ~~lease or rental agreement, that declaration shall be nullified and~~  
6     ~~the lease or rental agreement shall remain in effect if the lessee or~~  
7     ~~tenant performs within three days after service of the notice or if~~  
8     ~~the breach is waived by the lessor or the landlord after service of~~  
9     ~~the notice.~~

O